

Exhibit 2

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Steven U. Ross in Support of
Plaintiffs' Opposition to Sandoz, Inc.'s Motion for Summary Judgment

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

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THIS DOCUMENT RELATES TO	MDL No. 1456
State of California, ex rel.	Civil Action:
Ven-A-Care v. Abbott	01-12257-PBS
Laboratories, Inc., et al.	

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WEDNESDAY, OCTOBER 22, 2008

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VIDEOTAPED DEPOSITION OF
CRAIG MILLER - VOLUME II

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Reported By: INA C. LeBLANC, CSR No. 6713

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1 calculation?

2 A. It would be.

3 Q. You just divide by the .11, and you'd
4 have the AMP?

5 A. That's correct.

6 Q. Did anyone from Medi-Cal ever perform
7 that process and calculate AMP from URA?

8 MR. PAUL: Objection. Form.

9 THE WITNESS: Not to the extent that
10 I've been able to find out, no.

11 BY MR. ROBBEN:

12 Q. What have you done to try to determine
13 whether or not that happened?

14 A. I asked Kevin Gorospe, who was here
15 from 1995, predating me, and no one has done
16 that. The CMS instructions to the states are
17 only to do URA received from CMS, not to use URA
18 that might be derived from information submitted
19 by a third-party data vendor, for example, First
20 Data Bank, or to use information that a labeler
21 would send in, a manufacturer might send in to
22 calculate the amount.

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1 reimbursed for?

2 A. That's correct.

3 Q. And that URA would -- should in each
4 instance reflect one-tenth of AMP?

5 A. Yes.

6 MR. BENNETT: No more questions.

7

8 EXAMINATION

9 BY MS. BERWANGER:

10 Q. Again, for the record, my name is Lara
11 Berwanger. I represent Sandoz Inc.

12 Mr. Miller, I believe that you
13 testified earlier today that you had some
14 conversations with Kevin Gorospe about whether
15 California compared AMP or URA as to any other
16 pricing information.

17 A. Yes.

18 Q. And from your conversations with him,
19 you determined that California did not compare
20 AMPs or URAs to any other pricing information,
21 correct?

22 A. Correct.

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1 Q. Are you familiar with the term AWP?

2 A. Yes.

3 Q. Based on your conversation with Mr.
4 Gorospe, is it fair to say that California did
5 not compare AMP or URA information to AWP?

6 A. In everything but a training that Kevin
7 had done for us where AWP was listed as 100 and
8 AMP, in this example, was listed as 80, and I
9 just assume that's a generally known percentage
10 difference between the two figures.

11 Q. So you assume it's generally known that
12 AWP is higher than AMP?

13 A. Yes.

14 Q. And aside from that training material
15 that I believe was an exhibit to your last
16 deposition --

17 A. Yes.

18 Q. -- to your knowledge, there have been
19 no other calculations or comparisons done between
20 AMPs or URAs and AWP?

21 A. Correct.

22 Q. I'm going to put in front of you some

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1 documents that we went over at your last
2 deposition. These are documents marked Miller
3 Exhibit 7 through Miller Exhibit 10.

4 Sorry. I only have one copy of these.

5 Do you recall seeing these at your last
6 deposition?

7 A. Yes.

8 Q. For the record, these are
9 communications from Geneva Pharmaceuticals, which
10 is the former name of my client, Sandoz Inc., to
11 the State of California, correct?

12 A. Yes.

13 Q. And I believe you agreed with me at
14 your last deposition that based on these letters,
15 California received AMPs directly from Geneva
16 Pharmaceuticals from 1992 through 1996; is that
17 correct?

18 A. I need to review this to see the dates
19 here.

20 Q. Sure. Take your time.

21 A. 1992, '94, and 1995, 1996 -- yes.

22 Q. And I believe that at your last

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1 deposition you agreed with Mr. Robben that AMPs
2 were to represent a price generally paid by
3 manufacturers to -- I'm sorry. Scratch that.

4 I believe at your last deposition you
5 agreed with Mr. Robben that AMPs represented a
6 price paid by wholesalers to manufacturers for
7 their drugs; is that correct?

8 A. Correct.

9 Q. So if California had compared --
10 scratch that.

11 Is it fair to say, based on your
12 conversation with Kevin Gorospe, that California
13 never compared Sandoz AMPs that FDB published --
14 that First Data Bank published for Sandoz during
15 the period 1992 to 1996?

16 A. Yeah. I so stated.

17 Q. And is it fair to say that if
18 California had compared the AMPs for Sandoz
19 products from 1992 to 1996 to the AWP's reported
20 in First Data Bank for Sandoz, that it would have
21 found that the AWP's were higher than the AMP's?

22 A. I've been told that the AWP's should be

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1 always higher than the AMPs. Sometimes AMPs are
2 zero, for example, if the calculations of how the
3 manufacturer chose to load on their sales in the
4 calculations for free goods and returns and
5 bundled sales and things like that.

6 Q. But it's fair to say that it's likely
7 that Sandoz AWP's during this time period were
8 higher than the AMPs, correct?

9 A. I would assume so.

10 Q. And it's fair to say that California
11 could have compared the AMPs in these letters
12 during the time period to the AWP's reported by
13 Sandoz and seen that the AWP's were higher than
14 the AMPs, correct?

15 MR. PAUL: Objection. Form.

16 THE WITNESS: In theory, but there
17 would have been no purpose. I mean, we don't use
18 -- we use what --

19 For rebate purposes, we use the data
20 that's submitted by the manufacturer, and it's
21 loaded onto the system, and we don't -- we don't
22 look at pricing data for -- because we have no

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1 influence over the calculations of the rebate --
2 federal rebate, and we receive AMP for the
3 supplemental rebate if it's a supplemental AMP-
4 based contract.

5 BY MS. BERWANGER:

6 Q. But someone at DHCS could have compared
7 the AWP's reported by Sandoz for the time period
8 to the AMP's and seen that the AWP's for the time
9 period were higher than prices that wholesalers
10 were purchasing the drugs at, correct?

11 A. I assume so. I wouldn't know to what
12 purpose. Again, you would have to get resources.
13 You would have to identify why you wanted to do
14 that.

15 Q. But it could have been done?

16 A. It's possible.

17 Q. Are you familiar with the term WAC?

18 A. Yes.

19 Q. From your conversation with Kevin
20 Gorospe, is it fair to say that the AMP's reported
21 by Sandoz during this period were not compared to
22 Sandoz-reported WAC's for the time period?